

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO.1033 OF 2005
IN
EXECUTION APPLICATION NO.183 OF 2004
IN
SUMMARY SUIT NO.1510 OF 2002

M/s.G.M.Breweries Ltd. ...Plaintiffs

Versus

M/s.Siddhivinayak Builders & Ors. ...Defendants

And

Urvarshi Arora & Suresh ...Intervenors/Obstruc./

Kumar Arora Respondent

.....

Ms.Sumedha Rao for Applicants/Intervenors.

Mr.O.A.Das for Plaintiffs.

Mr.G.T.Mestha, Commissioner for Taking Accounts
is present.

.....

CORAM: A.M.KHANWILKAR, J.

SEPTEMBER 20, 2005.

P.C.

1. This Application is taken out by the

Applicants (third party) for setting aside the order of attachment in respect of building known as Venus shown as Item No.5 in the schedule to the Execution Application.

2. This relief is sought on the assertion that the Applicants have purchased Flat No.B-203 on the 2nd Floor, in the building known as Venus situated at Chikoowadi, Boriwali (West), Mumbai 400 092 under registered Agreement For Sale dated 18th February 1997. Indeed, copy of the said Agreement is produced on record. From the Agreement, it is seen that the total consideration payable in respect of flat was Rs.3,63,000/- (Rupees Three Lakhs Sixty-three Thousand). Besides, part payment of Rs.80,250/- (Rupees Eighty Thousand Two Hundred Fifty), no document is produced on record to show that further consideration has been paid. Moreover, there is nothing to show that the Applicants have been put in possession of the said flat so far. No possession receipt is produced.

3. The warrant of attachment has been issued on 7th July 2004. As the Applicants have failed to

produce any evidence and have expressed inability to produce further evidence to substantiate their case that they have become owners of the Flat upon payment of consideration, relief claimed in this Application ought to fail.

4. Accordingly, as there is no evidence to substantiate the claim that Applicants have paid entire consideration under the Agreement and that possession of Flat No.B-203 has not been made over to the Applicants, the question of acceding to the request of the Applicants to raise attachment in respect of the said flat or for that matter, the entire building, does not arise.

5. This Application, therefore, fails. The same is rejected.

A.M.KHANWILKAR, J.